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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,891	06/14/2005	Raymond Seltzer	HC/1-22816/ACGC 2135/PCT	5156
324	7590	02/11/2009	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			DEES, NIKKI H	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			02/11/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,891

Applicant(s)

SELTZER ET AL

Examiner

Nikki H. Dees

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

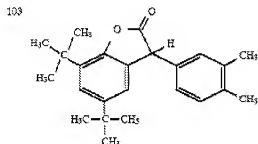
1. The Amendment filed January 21, 2009, has been entered. Claims 1-4 and 14-17 are currently pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nesvadba (5,814,692) in view of Griffith et al. (2,768,084) and Codex Standard 19 (Codex Standard for Edible Fats and Oils not Covered by Individual Standards. 1999. Codex Alimentarius) with evidence provided by Francis (Francis, F.J. 2000. Encyclopedia of Food Science and Technology. John Wiley & Sons, Inc. pp. 721-724).
4. Nesvadba teaches 3-arylbenzofuranones including the compound shown below



5. Additional examples of related compounds are shown in Table 1 of Nesvadba. Nesvadba states that the compounds are suitable for stabilizing organic materials against oxidative degradation (col. 25 lines 19-21). Examples of materials that are suitable to be stabilized include naturally occurring organic materials such as animal and vegetable fats, oils and waxes (col. 29 lines 16-23).
6. Nesvadba further teaches that the compounds are to be added to the materials where degradation is to be retarded in amounts preferably ranging from 0.01 to 2% by weight (col. 28 lines 43-46). Nesvadba teaches that the compounds of his invention may be provided in combination with antioxidants including tocopherols (col. 29 item 1.4) and esters of 3,5-di-tert-butyl-4-hydroxyphenyl acetic acid with mono- or polyhydric alcohols (col. 30 item 1.16).
7. Nesvadba is silent as to the organic materials being a foodstuff as claimed in claim 1, or containing fatty acid glycerides, edible fats or fatty oils, as well as the organic substance being a pet food or animal feed.
8. Griffith et al. teach an antioxidant for stabilizing foodstuffs including mayonnaise, margarine, sausage and cheese spread, or any food product containing a large amount of fatty material subject to rancidity. They state that it is well-known that rancidity

results primarily from products formed by oxidation (col. 1 lines 22-37). The foodstuffs of Griffin et al. are known to contain edible fats, fatty acid glycerides and fatty oils.

9. Griffith et al. specifically speak to the antioxidants butylated hydroxyanisole (BHA), ascorbic acid and tocopherols for use in his invention. Griffith et al. are silent as to the use of butylated hydroxytoluene (BHT) as an antioxidant in their invention.

10. Codex Stan. 19 teaches antioxidants suitable for use in edible fats and oils, which includes fatty acid glycerides. Antioxidants include BHT, BHA, gallates, and tocopherols (p. 2, 3.4).

11. As Nesvadba teaches an antioxidant compound for use with animal and vegetable fats, oils and waxes, Griffith et al. teach antioxidants for use in foodstuffs containing animal and vegetable fats and oils and Codex Stan. 19 teaches a number of antioxidants for use in fats and oils, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the antioxidant as taught by Nesvadba for use as the antioxidant in the foodstuffs as taught by Griffith et al. and Codex Stan. 19. The use of the antioxidant as taught by Nesvadba in the foodstuffs would have yielded the predictable result of retarding oxidative degradation in any foodstuff, pet food, or animal feed containing fats and oils normally susceptible to oxidative degradation. "It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art." In re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

12. Regarding the amendment to claim 1 requiring fatty acid glycerides having from 12-24 carbon atoms per ester site, Francis provides evidence that nearly all fatty acids present in the foodstuffs as claimed, and as taught by the prior art, would inherently possess 12-24 carbon atoms per ester site as claimed. Tables 3, 4, and 5 show the fatty acids of animal fats, fish oils, and common vegetable oils. All fats/oils taught by Francis possess from 12-24 carbon atoms per ester site. Therefore, while not specifically taught by the prior art, it is considered inherent that the foodstuffs of the prior art possess fatty acids having a carbon chain length as claimed.

Response to Arguments

13. Applicant's arguments filed January 21, 2009, with respect to claims 1-4 and 14-17 have been considered but they are not persuasive.

14. Applicant argues (Remarks, p. 10) that the combination of Nesvadba, Griffin, and the Codex standard are silent as to the carbon chain lengths of the fatty acid glycerides contained in foodstuffs.

15. The rejection has been amended to incorporate Applicant's amendment to claim 1. It is noted that the carbon chain lengths claimed for the fatty acid glyceride are inherent in many common animal fats and vegetable oils and would be expected to be present in the foodstuffs of the prior art.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Lawrence Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

Nikki H. Dees
Examiner
Art Unit 1794